

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**KENNETH B. BYRD JR.**  
Claimant

VS.

**MARTIN TRANSPORTATION**  
Respondent

AND

**ACCIDENT FUND INS. CO. OF AMERICA**  
Insurance Carrier

Docket No. **1,052,968**

**ORDER**

Respondent and its insurance carrier request review of the May 7, 2012 Order entered by Administrative Law Judge Steven J. Howard.

**ISSUES**

A preliminary hearing was held in this claim on January 6, 2011, on claimant's request for temporary total disability compensation. Respondent raised the issue whether there was Kansas jurisdiction for the alleged work-related injury. Administrative Law Judge (ALJ) Marcia Yates-Roberts denied claimant's request noting claimant failed to present medical evidence that claimant was temporarily totally disabled. But the ALJ did not address the issue of Kansas jurisdiction. Upon appeal to the Board the ALJ's decision was set aside and the case was remanded for the ALJ to first determine the issue whether there was jurisdiction under the Kansas Workers Compensation Act (Act) pursuant to K.S.A. 44-506 before addressing the remaining issues.

Upon remand the matter was reassigned ALJ Steven J. Howard, who determined that Kansas was claimant's principal place of business which conferred Kansas jurisdiction on the claim. The ALJ then noted that the original determination by the ALJ clearly indicated that no temporary total disability benefits were warranted and the remaining issues were moot.

Respondent requests review of whether Kansas has jurisdiction over this claim. Respondent argues the claimant has failed to establish that at the time of his accident his

principal place of business was Kansas. Therefore, there is no Kansas jurisdiction for this claim.

Claimant argues the Board does not have jurisdiction to review respondent's appeal as the underlying denial of temporary total disability benefits was not appealed and consequently, determination of the jurisdiction issue is would merely be an advisory opinion. Therefore, claimant argues the respondent's application for review should be dismissed.

The issues raised on appeal from this preliminary hearing include whether there is Kansas jurisdiction for this claim and whether the Board has jurisdiction to review this appeal from a preliminary hearing.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

As previously noted, after the preliminary hearing on this claim was held on January 6, 2011, the ALJ issued a Preliminary Decision denying claimant's request for temporary total disability benefits. Upon appeal, the Board set aside the Preliminary Decision and remanded the claim for the ALJ to first determine whether there was Kansas jurisdiction before deciding the remaining issues.

K.S.A. 44-534a restricts the jurisdiction of the Board to consider appeals from preliminary hearing orders to the following issues:

- (1) Whether the employee suffered an accidental injury;
- (2) Whether the injury arose out of and in the course of the employee's employment;
- (3) Whether notice is given or claim timely made;
- (4) Whether certain defenses apply.

These issues are considered jurisdictional and subject to review by the Board upon appeals from preliminary hearing orders. The Board can also review a preliminary hearing order entered by an ALJ if it is alleged the ALJ exceeded his or her jurisdiction in granting or denying the relief requested.<sup>1</sup>

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<sup>1</sup> See K.S.A. 44-551.

Whether the accidental injury is subject to the Act clearly qualifies as a certain defense to a claim. A preliminary decision on Kansas jurisdiction clearly provides the Board jurisdiction to consider an appeal of that issue.

Claimant argues that because a preliminary decision is not binding upon a full hearing on the claim, a determination that there is Kansas jurisdiction would simply be an advisory opinion. As previously noted, the Act provides for appeals from preliminary hearings and adopting claimant's argument would render any preliminary decision non-appealable. The claimant's argument also fails to recognize that the Board set aside the January 6, 2011 preliminary decision. Consequently, all issues were ripe for decision on remand. Again, the determination that there was Kansas jurisdiction for the claim clearly raised an appealable issue. The Board has jurisdiction to address the respondent's appeal.

Claimant was hired as a truck driver by respondent on November 19, 2007. His principal job duties include routes primarily in Kansas. From November 2007 through May or June 2009, claimant's route was from Kansas City, Kansas, to Ada, Oklahoma. Due to that route being terminated, claimant was assigned different routes to drive in multiple states after June 2009.

Claimant testified that 60 percent of his work was performed in Kansas. Respondent hired claimant at their Kansas City, Missouri, terminal in November 2007. In June 2008 the terminal location changed to Kansas City, Kansas, and remained there until August 2009. Claimant would report to work at this terminal.

K.S.A. 2010 Supp. 44-501(g) provides in pertinent part:

It is the intent of the legislature that the workers compensation act shall be liberally construed for the purpose of bringing employers and employees within the provisions of the act to provide the protections of the workers compensation act to both. The provisions of the workers compensation act shall be applied impartially to both employers and employees in cases arising thereunder.

The Act confers jurisdiction in some cases where the injury is sustained outside the state.

K.S.A. 44-506 provides:

The workmen's compensation act shall not be construed to apply to business or employment which, according to law, is so engaged in interstate commerce as to be not subject to the legislative power of the state, nor to persons injured while they are so engaged: *Provided*, That the workmen's compensation act shall apply also to injuries sustained outside the state where: (1) The principal place of employment is within the state; or (2) the contract of employment was made within the state, unless such contract otherwise specifically provides: *Provided, however*, That the

workmen's compensation act shall apply to all lands and premises owned or held by the United States of America by deed or act of cession, by purchase or otherwise, which is within the exterior boundaries of the state of Kansas and to all projects, buildings, constructions, improvements and property belonging to the United States of America within said exterior boundaries as authorized by 40 U.S.C. 290, enacted June 25, 1936.

Because claimant's accident occurred in Missouri and his contract of employment was also made in Missouri, for the Kansas Workers Compensation Act to be applicable the claimant must establish that his principal place of employment was within Kansas.<sup>2</sup>

Legislative history establishes that the phrase "principal place of employment" refers to the employee's principal place of employment.<sup>3</sup> Unfortunately, in a case such as this, where a claimant's employment spans a number of years, neither the history nor case law sheds light on whether the employee's principal place of employment should be a function of time, task or earnings.

As found by the ALJ, claimant over the span of his employment with respondent, spent the majority of his time in Kansas. The corollary would also be that he earned the majority of his income while working in Kansas. In this instance, the ALJ found, and this Board Member agrees, that claimant's principal place of employment was in Kansas. Moreover, the legislative mandate to liberally construe the act to bring employers and employees within the act further supports the finding.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>4</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2010 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.<sup>5</sup>

**WHEREFORE**, it is the finding of this Board Member that the Order of Administrative Law Judge Steven J. Howard dated May 7, 2012, is affirmed.

**IT IS SO ORDERED.**

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<sup>2</sup> *Knelson v. Meadowlanders, Inc.*, 11 Kan. App. 2d 696, 732 P.2d 808 (1987).

<sup>3</sup> *Id.* at ¶ 1.

<sup>4</sup> K.S.A. 44-534a.

<sup>5</sup> K.S.A. 2010 Supp. 44-555c(k).

Dated this 25th day of July, 2012.

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HONORABLE DAVID A. SHUFELT  
BOARD MEMBER

c: Mark E. Kolich, Attorney for Claimant, mek@kolichlaw.com  
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Steven J. Howard, Administrative Law Judge